

**IN RE: NEW ENGLAND
COMPOUNDING PHARMACY, INC.,
PRODUCTS LIABILITY LITIGATION**

This Document Relates to All Cases

**IN THE
UNITED STATES DISTRICT COURT**

DISTRICT OF MASSACHUSETTS

CASE NO.: MDL NO. 1:13-md-02419

**NON-PARTY BALTIMORE PAIN MANAGEMENT CENTER'S MOTION FOR
LEAVE TO FILE A SUR-REPLY TO PSC'S MOTION TO COMPEL, MOTION
FOR FINDING OF CIVIL CONTEMPT AND MOTION FOR SANCTIONS**

Non-Party Baltimore Pain Management Center ("BPMC") by and through its undersigned counsel, hereby moves in accordance with Rule 7.1(b)(3) of the Local Rules of the United States District Court for the District of Massachusetts, for leave to file a response to the Reply filed by the PSC to BPMC's Opposition to the PSC's Motion to Compel Production, For a Finding of Civil Contempt and Motion for Sanctions (Dkt. 849). A copy of the Proposed Sur-Reply memorandum is attached. In support this Motion for Leave, BPMC states as follows:

On November 13, 2013 Magistrate Judge Boal issued an Order on Motions to Quash and Objections to Subpoenas (the "Order"). (Dkt 572) On December 3, 2013 BPMC issued a response to the relevant Subpoena in accordance with the Order. On January 17, 2014, 45 days later, the PSC filed a Motion to Compel, Motion for a Finding of Civil Contempt and Motion for Sanctions against BPMC (the "Motions"). (Dkt 786, 787, 788). BPMC, a non-party respondent, which maintains that the Subpoena is quashed as to it, filed an Opposition on February 2, 2014 (Dkt. 842) and PSC filed a reply on February 4, 2014 (Dkt. 849).

In reviewing the Reply filed by PSC, it is evident that they place a reliance on a quote from their own affidavit which, although the language was included in their affidavit, *per se*, it is quoted in the Reply in such a fashion as to lead the reader to think it was part of an email or accompanying conversation.

In light of the way this information was presented in the PSC reply, BPMC respectfully requests that this Court grant it leave to file a written response in order to address the misleading application of the quoted material and that such a Sur-Reply will be helpful to the Court in ultimately determining the core issue raised by PSC in its Motion to Compel: namely whether PSC provided notice of an NECC related claim against BPMC.

Wherefore, for the foregoing reasons, BPMC respectfully requests that this Court Grant them leave to file a Sur-Reply to the reply filed by PSC (Dkt 849). The proposed Sur-Reply memorandum is attached hereto.

February 11, 2014

Respectfully submitted,

**MARKS, O'NEILL, O'BRIEN,
DOHERTY & KELLY, P.C.**

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 11th day of February 2014, a copy of the foregoing Motion for Leave to File a Sur-Reply, with proposed Order was filed electronically via the Court's electronic filing system. Notice of this filing will be sent electronically to parties and non-party attorneys who are registered with the Court's electronic filing system in this MDL.

**MARKS, O'NEILL, O'BRIEN,
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